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TRANSPORTATION, INC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT  
WESTERN DIVISION

EDGAR GARCIA FLORES,  
Individually and on Behalf of Others of  
the General Public Similarly Situated,

Plaintiff,

vs.

NATIONAL RETAIL  
TRANSPORTATION, INC.; and DOES  
1 to 10,

Defendants.

CASE NO. 2:11-CV-01424-SVW-PLA

**REVISED STIPULATED  
PROTECTIVE ORDER**

**GOOD CAUSE STATEMENT**

This stipulation is entered between Plaintiff Edgar Garcia Flores (“Flores”) and Defendant National Retail Transportation, Inc. (“NRT”) and requests the entry of the Protective Order, set forth below, which has been revised in accordance with the Court’s Memorandum and Order of August 22, 2011, at ¶ 2(c), ¶ 3(d), ¶ 4(b), ¶ 7(a)(v), ¶ 8, ¶ 10(c) and ¶ 16.

Whereas, the parties recognize that it may be necessary to disclose certain confidential information during the course of this litigation regarding NRT’s employment and business practices, NRT’s former and current employees, information which may be subject to privacy rights under federal and state law, and/or information which a producing party claims in good faith to constitute or relate to trade secrets or confidential, proprietary information under applicable law.

Whereas, as a result, NRT desires to limit disclosure and prevent use of such information which may be produced for purposes other than the prosecution and defense of this action and the parties agree all material designated pursuant to the stipulated protective order shall be used only for the purposes of the defense or prosecution of this litigation to the extent reasonably necessary to accomplish the purpose for which disclosure is made.

Whereas, the parties agree that a stipulated protective order in the form set forth herein below and submitted herewith is necessary to protect the confidentiality of the designated material and outweighs the interests of the public to gain access to the designated material. *See, Phillips v. GM Corp*, 307 F.3d 1206, 1209-11 (9th Cir. 2002)

Whereas, the parties recognize that Flores is seeking that the Court certify this case as a class action and NRT opposes class certification at this time. However, this stipulated protective order is intended to apply to this case throughout its duration and to any class action which may be certified by the

1 Court. In addition, the parties contemplate that non-parties may produce  
2 confidential information.

3 Whereas, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure,  
4 the parties, by and through their respective undersigned counsel, hereby stipulate  
5 and agree to the request for, and entry of, the Protective Order (hereinafter  
6 “Order”), which is set forth herein below.

7  
8 GOOD CAUSE APPEARING,

9 THE COURT HEREBY ORDERS as follows:

10 1. DEFINITIONS

11 a. “Designated Material” shall mean any Discovery Material  
12 designated by a Producing Party as CONFIDENTIAL INFORMATION or  
13 ATTORNEYS’ EYES ONLY INFORMATION, which comprises or contains  
14 information that the Producing Party claims in good faith to constitute or relate  
15 to trade secrets under applicable law, confidential, proprietary information  
16 and/or information seeking consumer records which may be subject to privacy  
17 rights under federal and state law, such as, without limitation, (i) employee  
18 information including, for example, employee names, addresses and telephone  
19 numbers, overtime records, wage and hours information, payroll information,  
20 compensation, evaluations, workers compensation records, immigration and  
21 customs records and other employment information; (ii) commercial information  
22 (including, for example, business and/or employment policies and employment  
23 agreements), (iii) financial information (including, for example, financial records  
24 of NRT and equipment costs), (iv) business relationship information (including,  
25 for example, information pertaining to former, potential and/or existing  
26 employees, customers and vendors, and (v) employee equipment and uniform  
27 records, including but not limited to costs and reimbursements. All of the  
28 foregoing information described in Paragraph 1(a)(i), (ii), (iii), (iv) and (v) may

1 be designated as ATTORNEY'S EYES ONLY or CONFIDENTIAL as  
2 appropriate, except that information and/or documents containing NRT policies  
3 and procedures regarding tools, reimbursement for tools, and compensation for  
4 time spent obtaining tools which were provided to NRT employees may only be  
5 designated as CONFIDENTIAL.

6 b. "Discovery Material" shall mean any Document (as defined below),  
7 material, item, testimony, or thing filed with or presented to the Court or  
8 produced, served, or generated during the discovery process, including, for  
9 example, exhibits, answers to interrogatories, responses to requests for  
10 admissions, responses to requests for production, subpoenas, declarations,  
11 affidavits, and deposition testimony or transcripts, and all copies, extracts,  
12 summaries, compilations, designations, and portions thereof.

13 c. "Document" shall mean every means of recording any form of  
14 communication or representation upon any tangible thing, including letters,  
15 words, pictures, sounds, or symbols, or combinations thereof, whether recorded  
16 by handwriting, printing, photostatic or photographic means, magnetic impulse,  
17 tape, computer disk, CD-ROM or any other form of data storage, data  
18 compilation, or mechanical or electronic recording, and all other tangible things  
19 which come within the meaning of "writings" or "recordings" contained in Rule  
20 1001 of the Federal Rules of Evidence, or within the meaning of "document" or  
21 "tangible thing" contained in Rule 34 of the Federal Rules of Civil Procedure.

22 d. "Producing Party" shall mean any party to this action or any third  
23 party, including its counsel, retained experts, directors, officers, employees, or  
24 agents, who produces any Discovery Material for this action, or one who  
25 designates any Discovery Material produced by another party or third party.

26 e. "Receiving Party" shall mean any party to this action, including its  
27 counsel, retained experts, directors, officers, employees, or agents, who receives  
28 any Discovery Material.

2. CATEGORIES OF DESIGNATED MATERIAL

a. Categories. Any Producing Party or party may mark Designated Material as: (i) "CONFIDENTIAL INFORMATION"; or (ii) "ATTORNEYS' EYES ONLY INFORMATION," if the Producing Party claims in good faith that the Designated Material is of such an extremely sensitive nature that the disclosure of such Designated Material to a Receiving Party would result in competitive or other business injury to the Producing Party or violate the privacy rights of former, prospective or current employees of National Retail Transportation, Inc. The parties agree to not use the designation "ATTORNEYS' EYES ONLY INFORMATION" for purposes of harassing the Receiving Party or for purposes of unnecessarily restricting the Receiving Party's access to information concerning the lawsuit.

b. Scope. The scope of this Order shall be understood to encompass not only Designated Material which is expressly designated as CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY INFORMATION, but also any information copied therefrom, and all copies, excerpts, and summaries thereof, as well as testimony and oral conversations which reveal that information.

c. Additional Categories. The parties may agree to add additional categories of Designated Material (in addition to CONFIDENTIAL INFORMATION and ATTORNEYS' EYES ONLY INFORMATION) from time to time as necessary. If the parties cannot resolve the issue of whether this Order should be amended to include the proposed new category of Designated Material, the dispute may be submitted to the Court in accordance with Local Rule 37. Disclosure of the Discovery Material, however, shall still be made, but with the highest level of confidentiality available under this Order, pending resolution of the objection by the parties or the Court, as the case may be.

1        3.        PROCEDURE FOR MARKING DESIGNATED MATERIAL

2                Marking Designated Material as CONFIDENTIAL INFORMATION or  
3        ATTORNEYS' EYES ONLY INFORMATION shall be made by the Producing  
4        Party in the following manner:

5                a.        Production. In the case of documents or any other tangible thing  
6        produced, designation shall be made by placing the legend "CONFIDENTIAL  
7        INFORMATION" (or a substantial equivalent, such as "CONFIDENTIAL") or  
8        "ATTORNEYS' EYES ONLY INFORMATION" (or a substantial equivalent,  
9        such as "ATTORNEYS' EYES ONLY") on each page of the document, and in  
10       case of a tangible thing, on the cover, the packing or in any other prominent  
11       place on the subject tangible thing, prior to production of the document or  
12       tangible thing; if such marking is not practicable in case of a tangible thing,  
13       designation shall be made by designating in writing such tangible thing as  
14       "CONFIDENTIAL INFORMATION" or "ATTORNEYS' EYES ONLY  
15       INFORMATION," as appropriate, prior to the production.

16                b.        Inspection. In producing original files and records for inspection,  
17        no marking need be made by the Producing Party in advance of the inspection.  
18        For the purposes of the inspection, all documents made available for inspection  
19        shall be considered as marked "ATTORNEYS' EYES ONLY  
20        INFORMATION." Thereafter, upon selection of specified documents for  
21        copying by the Receiving Party, the Producing Party shall mark as  
22        "CONFIDENTIAL INFORMATION" (or a substantial equivalent, such as  
23        "CONFIDENTIAL") or "ATTORNEYS' EYES ONLY INFORMATION" (or a  
24        substantial equivalent, such as "ATTORNEYS' EYES ONLY") the copies of  
25        such documents as may contain confidential information at the time the copies  
26        are produced to the Receiving Party; and

27                c.        Deposition Testimony. In the case of deposition testimony,  
28        transcripts or portions thereof, designation shall be made by the Producing Party

1 either (i) on the record during the deposition, in which case the portion of the  
2 transcript of the designated testimony shall be bound in a separate volume and  
3 marked "CONFIDENTIAL INFORMATION" (or a substantial equivalent, such  
4 as "CONFIDENTIAL") or "ATTORNEYS' EYES ONLY INFORMATION"  
5 (or a substantial equivalent, such as "ATTORNEYS' EYES ONLY") by the  
6 reporter, as the Producing Party may direct, or (ii) by captioned, written notice to  
7 the reporter and all counsel of record, given within ten (10) business days after  
8 the reporter sends written notice to the deponent or the deponent's counsel that  
9 the transcript is available for review, in which case all counsel receiving such  
10 notice shall be responsible for marking the copies of the designated transcript or  
11 portion thereof in their possession or control as directed by the Producing Party  
12 or deponent. Pending expiration of the ten (10) business days, all parties and, if  
13 applicable, any third party witnesses or attorneys, shall treat the deposition  
14 transcript as if it had been designated "ATTORNEYS' EYES ONLY  
15 INFORMATION." No person shall attend the designated portions of such  
16 depositions, unless such person is an authorized recipient of Designated Material  
17 under the terms of this Order. If there is any additional cost charged by the  
18 Court Reporter regarding such designation, the Producing Party shall pay all  
19 such costs.

20 d. In the case of information contained in discovery requests or  
21 discovery responses served upon the other side, or in any pleadings or papers  
22 filed with the Court (such as briefs, memoranda, affidavits, declarations and the  
23 like) designation may be made by prominently marking any page or pages  
24 containing the information being so designated "CONFIDENTIAL  
25 INFORMATION" (or a substantial equivalent, such as "CONFIDENTIAL") or  
26 "ATTORNEYS' EYES ONLY INFORMATION" (or a substantial equivalent,  
27 such as "ATTORNEYS' EYES ONLY") as appropriate. If such papers or  
28 pleadings are filed with the Court, the portions of such papers containing



1 Designated Material shall be filed under seal in accordance with Section 8 of this  
2 Order and pursuant to Local Rule 79-5.

3 4. CONTESTING THE DESIGNATION

4 a. No Wavier. No party to this action shall be obligated to challenge  
5 the propriety of any designation by any Producing Party, and a failure to do so  
6 shall not constitute a waiver or in any way preclude a subsequent challenge in  
7 this or any other action to the propriety of such designation.

8 b. Objection. Any party may contest a claim of confidentiality. Any  
9 party objecting to the designation of any Discovery Material as Designated  
10 Material, such as CONFIDENTIAL INFORMATION or ATTORNEYS' EYES  
11 ONLY INFORMATION, must give outside counsel of record for the Producing  
12 Party written notice of its reasons for the objection. Failing resolution after  
13 service of the written notice of its reasons for the objection, the party objecting  
14 may, pursuant to Local Rule 37, seek an order changing or removing the  
15 designation. In the resolution of such matter, the burden of establishing  
16 confidentiality shall be on the party who made the claim of confidentiality, *i.e.*,  
17 the Producing Party, but information designated as CONFIDENTIAL  
18 INFORMATION or ATTORNEYS' EYES ONLY INFORMATION shall be  
19 deemed as such until the matter is resolved.

20 5. RESTRICTION ON DISCLOSURE AND USE

21 a. Confidentiality. Designated Material and the information derived  
22 from such Designated Material (excluding information which is derived lawfully  
23 from an independent source) shall be kept confidential and shall not be given,  
24 shown, made available, discussed, or otherwise communicated in any manner,  
25 either directly or indirectly, to any person not authorized to receive the  
26 information under the terms of this Order.

27 b. Maintenance of Designated Material by the Receiving Party.  
28 Designated Material shall be maintained by the Receiving Party at a location and



1 under circumstances to ensure that access is limited to those persons entitled to  
2 have access under this Order.

3 c. Maintenance of Designated Material by the Producing Party. A  
4 Producing Party is free to do whatever it desires with its own Designated  
5 Material.

6 6. ACCESS TO DESIGNATED MATERIAL

7 a. Designated Material marked "ATTORNEYS' EYES ONLY  
8 INFORMATION" (or a substantial equivalent, such as "ATTORNEYS' EYES  
9 ONLY") shall be available only to the following persons subject to the terms of  
10 paragraph 7:

11 (i) Outside counsel of record to Flores and NRT in connection  
12 with this action, the outside counsel's partners, associates and employees, and  
13 any class counsel appointed pursuant to Rule 23(g) of the Federal Rules of Civil  
14 Procedure if the Court determines that this action should be certified as a class  
15 action;

16 (ii) Judges, Magistrate Judges, law clerks, and clerical personnel  
17 of the Court before which this action is pending or qualified court reporters;

18 (iii) Appropriate consultants or experts, excluding employees,  
19 officers or directors of a named party, retained by any of the parties or their  
20 counsel to consult or testify in the case;

21 (iv) Those identified as the author, drafter or addressee of said  
22 document, but only with respect to such document;

23 (v) Those who received the document or information prior to the  
24 commencement of this action, or during this action, but only if obtained  
25 independent and outside of this action and not in violation of this Order, and  
26 only with respect to such document or information;

27 (vi) Third party contractors and their employees involved in  
28 document management or copying services for this litigation;

(vii) Graphics or design services retained by counsel for a party for purposes of preparing demonstratives or other exhibits for deposition, trial, or other court proceedings in this action;

(viii) Jury or trial consulting services retained by a party in this action;

(ix) Persons who have been retained by a party to provide translation or interpretation from one language to another; and

(x) Mock jurors retained by a party in this action, excluding individuals who are officers, directors, or employees of a named party, or owners of any interest in a named party.

b. Designated Material marked “CONFIDENTIAL INFORMATION” shall be available only to:

(i) Those persons who may have access to materials designated “ATTORNEYS’ EYES ONLY INFORMATION” subject to the terms of paragraph 7;

(ii) Three designated employees of National Retail Transportation, Inc. and/or its parent company, National Retail Systems, Inc. (“NRS”) subject to the terms of paragraph 7, namely, Paul Hennessy, CFO of NRS, William Cluver, Vice President for Risk Management at NRS and Carlos Richter, Manager of NRT’s Maintenance Facility in Compton;

(iii) Flores shall have access to “CONFIDENTIAL INFORMATION” as set forth below;

(iv) Flores shall have access to “CONFIDENTIAL INFORMATION” until such time as the Court determines whether this action should be certified as a class action and whether Flores’ claims are typical of the claims or defenses of the class and whether Flores will fairly and adequately protect the interests of the class. In the event that the Court determines that Flores is an adequate class representative and that this action may be certified as

1 a class action, Flores may have access to “CONFIDENTIAL INFORMATION.”  
2 In the event that the Court determines that Flores’ claims are not typical of the  
3 claims of the class and/or that Flores will not fairly and/or adequately represent  
4 the class, Flores will not have access to “CONFIDENTIAL INFORMATION”  
5 should this action continue as a class action and the appropriate class  
6 representative as determined by the Court will have access “CONFIDENTIAL  
7 INFORMATION.” Provided, however, this does not restrict access by Flores to  
8 any information that pertains to him personally or that was distributed to him  
9 while employed by NRT.

10 7. CONDITIONS ON ACCESS TO DESIGNATED MATERIAL

11 a. Consultants, Experts, and Approved Designees. Prior to a  
12 Receiving Party giving, showing, disclosing, making available or  
13 communicating Designated Material to any expert or consultant under paragraph  
14 6.a.(iii), the party shall:

15 (i) Serve a notice on the Producing Party, identifying the  
16 approved designee, expert or consultant and, in the case of an expert or  
17 consultant, the expert’s or consultant’s business address, business telephone  
18 numbers, present employer and position.

19 (ii) Include with such notice, a copy of the Acknowledgment of  
20 Protective Order, in the form shown in Exhibit A, which is attached hereto,  
21 signed by the expert or consultant.

22 (iii) The Producing Party shall be entitled to object to such  
23 disclosure to the designee, expert or consultant within five (5) business days  
24 after receipt of the Acknowledgment of Protective Order by stating specifically  
25 in writing the reasons why such designee, expert or consultant should not receive  
26 the Designated Material.

1 (iv) The parties shall meet and confer within five (5) business  
2 days after the Producing Party serves its objection, for the purpose of attempting  
3 to resolve the objection.

4 (v) If the objection is not resolved by the parties, the Producing  
5 Party must file a motion which complies with Local Rule 37 to prevent  
6 disclosure, otherwise, the Producing Party shall be deemed to have withdrawn  
7 its objection. If the parties want the Joint Stipulation required under Local Rule  
8 37 under seal, the parties may file a stipulation to that effect or the moving party  
9 may file an ex parte application making the appropriate request. The parties  
10 must set forth good cause in the stipulation or ex parte application as to why the  
11 Joint Stipulation or portions thereof should be filed under seal.

12 (vi) In any motion before the Court, the Producing Party shall  
13 bear the burden of showing the need for confidentiality and the grounds for its  
14 objection. No disclosure of Designated Material shall be made to the proposed  
15 designee, expert or consultant until the parties resolve the matter, the objection is  
16 withdrawn, or the Court permits such disclosure.

17 (vii) The filing and pendency of objections shall not limit, delay,  
18 or defer any disclosures of Designated Material to persons as to whom no such  
19 objection has been made, nor shall it delay or defer any other pending discovery.

20 b. Authorization and Acknowledgment. Each person hereof  
21 (excluding Judges, Magistrate Judges, law clerks, and clerical personnel of the  
22 Court before which this action is pending or qualified court reporters) to whom  
23 Designated Material is to be given, shown, disclosed, made available or  
24 communicated in any way, shall first execute an Acknowledgment of Protective  
25 Order in the form shown in Exhibit A. Counsel to whom Designated Material is  
26 produced shall keep in his or her files an original of each such executed  
27 Acknowledgment of Protective Order until sixty (60) calendar days after the  
28 final termination of this action. Upon final termination of this action and at the

1 written request of the Producing Party, all such executed agreements shall be  
2 provided to outside counsel for the Producing Party, and the Receiving Party  
3 may retain copies of them.

4 8. PROCEDURES FOR FILING PAPERS WITH DESIGNATED  
5 MATERIAL

6 Nothing in this Order shall in any way limit or affect the ability of the  
7 Court to consider any Designated Material for any and all purposes in  
8 connection with any motion, application, hearing, trial, or otherwise.

9 Designated Material may be included with, or referred to in, papers filed  
10 with the Court where this case is now pending or in any other court only in  
11 accordance with the following procedures:

12 a. Designated Material. The Designated Material must be filed under  
13 seal in compliance with Local Rule 79.5.1 in sealed envelopes endorsed with the  
14 title of this action, an indication of the contents of the envelope, the identity of  
15 the filing party and the notation "CONFIDENTIAL - SUBJECT TO  
16 PROTECTIVE ORDER - NOT TO BE DISCLOSED (OTHER THAN TO THE  
17 COURT AND COURT PERSONNEL) EXCEPT BY COURT ORDER OR  
18 WRITTEN STIPULATION OF THE PARTIES." If Designated Material is  
19 included in any papers to be filed with the Court, such papers shall be  
20 accompanied by an application to file the papers -- or the confidential portion  
21 thereof -- under seal; the application must show good cause for the under seal  
22 filing. The application shall be directed to the judge to whom the papers are  
23 directed. Pending the ruling on the application, the papers or portions thereof  
24 subject to the sealing application shall be lodged under seal.

25 b. Papers Including Designated Material. The portions of any papers  
26 filed with the Court, including but not limited to pleadings and memoranda of  
27 law, which include information set forth in Designated Material must be filed  
28 under seal in accordance with the terms and procedures set forth in this Order

1 and in compliance with Local Rule 79.5.1, including the procedures for filing  
2 materials set forth above in paragraph 8(a). Counsel for the party filing papers  
3 with Designated Material shall be responsible for designating such papers filed  
4 with the Court as Designated Material and marked as CONFIDENTIAL  
5 INFORMATION or ATTORNEYS' EYES ONLY INFORMATION depending  
6 on the contents of the papers being filed. Such papers shall be subject to the  
7 terms of this Order.

8 **9. REDACTED FILINGS OF PAPERS WITH DESIGNATED MATERIAL**

9 Redacted versions of papers with Designated Material filed under seal  
10 may be filed with the Court in accordance with normal procedures and made  
11 publicly available provided that:

12 a. All Designated Material set forth in the papers is deleted or  
13 obscured and all Designated Material is removed as exhibits; and

14 b. Redacted versions of the papers are clearly marked "Public Version  
15 – Confidential Material Omitted." Redacted versions of the papers also must  
16 clearly identify each place where information or exhibits have been deleted.

17 **10. PROCEDURE FOR DISCLOSURES TO OTHER PERSONS**

18 This paragraph 10 applies to disclosure to persons, other than experts and  
19 consultants and described in paragraph 7.

20 a. Outside counsel of the Receiving Party shall notify, in writing,  
21 outside counsel for the Producing Party, stating therein the specific Designated  
22 Material to be disclosed and the name, address and position of the person(s) to  
23 whom such disclosure is to be made;

24 b. If no objection to such disclosure is made by outside counsel for the  
25 Producing Party within ten (10) business days of such notification, outside  
26 counsel for the Receiving Party shall be free to make such disclosure to the  
27 designated person(s); provided, however, that outside counsel for the Receiving  
28 Party shall serve upon outside counsel for the Producing Party, prior to

1 disclosure, an Acknowledgment of Protective Order in the form shown in  
2 Exhibit A, whereby such person agrees to comply with and be bound by this  
3 Order. The acknowledgment shall be retained by outside counsel for the  
4 Receiving Party, and distributed upon final disposition of this action as set forth  
5 in paragraph 15 below.

6 c. If, within ten (10) business days, the outside counsel for the  
7 Producing Party objects, in writing, to such disclosure and thereafter files a  
8 motion in compliance with Local Rule 37, no disclosure shall be made, except  
9 by order of the Court. Before filing such a motion, outside counsel for the  
10 Receiving Party shall meet and confer with outside counsel for the Producing  
11 Party in a good faith effort to resolve their differences.

12 d. Any party moving for such an order objecting to such disclosure  
13 shall explain why the requested disclosure is not appropriate, and the Producing  
14 Party shall bear the burden of justifying the confidentiality designation and  
15 explaining the harm that would result from the requested disclosure.

16 11. UNINTENTIONAL FAILURE TO DESIGNATE

17 If, through inadvertence, a Producing Party provides any Designated  
18 Material pursuant to this litigation without designating and marking the  
19 Designated Material as CONFIDENTIAL INFORMATION or ATTORNEYS'  
20 EYES ONLY INFORMATION, the Producing Party may subsequently inform  
21 the Receiving Party of the confidential nature of the disclosed Designated  
22 Material, and the Receiving Party shall treat the disclosed Designated Material  
23 as CONFIDENTIAL INFORMATION or ATTORNEYS' EYES ONLY  
24 INFORMATION upon receipt of written notice from the Producing Party.  
25 Disclosure of such Designated Material to persons not authorized to receive that  
26 material prior to receipt of the confidentiality designation shall not be deemed a  
27 violation of this Order. However, in the event the material has been distributed  
28 in a manner inconsistent with the categorical designation, the Receiving Party



1 will take the steps necessary to conform distribution to the categorical  
2 designation, *i.e.*, by retrieving all copies of the Designated Material, or notes or  
3 extracts thereof, in the possession of the persons not authorized under this Order  
4 to possess such Designated Material and advising the person to whom disclosure  
5 was made that the material is confidential and should be treated as provided in  
6 the Order.

7 12. UNINTENTIONAL DISCLOSURE OF PRIVILEGED INFORMATION

8 Counsel shall exert their best efforts to identify documents or material  
9 protected by the attorney-client privilege or the work-product doctrine prior to  
10 the disclosure of any such documents or material. If, however, a party  
11 unintentionally discloses documents or material that is privileged or otherwise  
12 immune from discovery, the party shall, within five (5) business days upon  
13 discovery of the disclosure, so advise the Receiving Party in writing, request the  
14 documents or material be returned, and attach a privilege log with an entry  
15 pertaining to the documents or material that is privileged or otherwise immune  
16 from discovery. If that request is made and the privilege log provided, no party  
17 to this action shall thereafter assert that the disclosure waived any privilege or  
18 immunity. It is further agreed that the Receiving Party will return or destroy the  
19 inadvertently produced documents or material, and all copies and derivations,  
20 within five (5) business days of the Receiving Party's receipt of a written request  
21 for the return of the documents or material. The cost, if any, for excising such  
22 documents or materials by the Receiving Party shall be borne by the Producing  
23 Party. The Receiving Party having returned the inadvertently produced  
24 documents or material may thereafter seek production of the documents or  
25 material in accordance with the Federal Rules of Civil Procedure. To the extent  
26 that any such inadvertently produced information was used, included, referenced  
27 or summarized in a pleading, deposition or other proceeding, in good faith,  
28 before a request for the return of the unintentionally produced information,

1 nothing in this paragraph shall require a Receiving Party to purge, redact or  
2 excise any such information.

3 13. INFORMATION NOT COVERED BY THIS ORDER

4 The restrictions set forth in this Order shall not apply to information  
5 which is in the possession of or otherwise known to the Receiving Party or the  
6 public before the date of its transmission to the Receiving Party, or which  
7 lawfully comes into the possession of or becomes known to the Receiving Party  
8 or lawfully comes into the possession of or otherwise becomes known to the  
9 public after the date of its transmission to the Receiving Party, provided that  
10 such information does not become publicly known by any act or omission of the  
11 Receiving Party which would be in violation of this order.

12 14. RESPONSIBILITY OF ATTORNEYS

13 Outside counsel of record shall be responsible for providing a copy of this  
14 Order to all persons entitled access to Designated Material under paragraph 6  
15 and to employ reasonable measures to control duplication of, access to, and  
16 distribution of copies of materials so designated. No person shall duplicate any  
17 Designated Material except, as contemplated by this Order, for use as exhibits at  
18 depositions, in connection with court filings or, as necessary, by counsel, experts  
19 or consultants approved under paragraphs 6 and 7 for use as working copies. All  
20 copies, extracts and translations must be appropriately marked and are subject to  
21 paragraph 15 of this Order.

22 15. FINAL DISPOSITION

23 Upon termination, settlement or final judgment of this litigation including  
24 exhaustion of all appeals, the originals and all copies of Designated Material  
25 shall be either destroyed or turned over to the Producing Party, or to their  
26 respective outside counsel, within sixty (60) calendar days. However, retained  
27 counsel may retain pleadings, attorney work product, consultant work product,  
28 and deposition transcripts for archival purposes. If Designated Material is

1 destroyed pursuant to this paragraph, outside counsel for the Receiving Party  
2 shall provide to outside counsel for the Producing Party a certification  
3 identifying when and how the destruction was performed. The provisions of this  
4 Order insofar as it restricts the disclosure, communication of, and use of  
5 Designated Material produced hereunder shall continue to be binding after the  
6 conclusion of this action.

7 **16. DISCLOSURE OF DESIGNATED MATERIAL AT TRIAL OR PRE-**  
8 **TRIAL HEARINGS**

9 This Order governs only discovery. All information which is introduced  
10 at trial that was designated as CONFIDENTIAL or ATTORNEY'S EYES  
11 ONLY and/or kept and maintained pursuant to the terms of this Protective Order  
12 becomes public and will presumptively be available to all members of the  
13 public, including the press, unless good cause is shown to the district judge in  
14 advance of the trial to proceed otherwise.

15 **17. REFERENCE TO THIS ORDER AT TRIAL**

16 No reference may be made at the trial in this action in the presence of a  
17 jury to the existence of this Order or to the effect that certain material is subject  
18 to this Order.

19 **18. NO LIMITATION OF OTHER RIGHTS**

20 This Order shall be without prejudice to the right of any party to oppose  
21 production of any information on any and all grounds other than confidentiality.

22 **19. RELEASE FROM OR MODIFICATION OF THIS ORDER**

23 This Order is entered without prejudice to the right of any party to apply  
24 to the Court at any time for additional protection, or to release, rescind, or  
25 modify the restrictions of this Order, to determine whether a particular person  
26 shall be entitled to receive any particular information or to seek relief from  
27 inadvertent disclosure of privileged or work-product information. This Order  
28 does not preclude all of the parties to this Order from entering into any

1 stipulation (in writing or on the record) constituting a modification of this Order.  
2 In all motions or other proceedings, the Producing Party shall have the burden of  
3 proof to justify the designation as Designated Material.

#### 4 20. DISCOVERY FROM THIRD PARTIES

5 If discovery is sought of a person not a party to this action (“third party”)  
6 requiring disclosure of such third party’s Designated Material, the Designated  
7 Material disclosed by any such third party will be accorded the same protection  
8 as the parties’ Designated Material, and will be subject to the same procedures  
9 as those governing disclosure of the parties’ Designated Material pursuant to this  
10 Order.

#### 11 21. ADMISSIBILITY

12 Nothing herein shall be construed to affect in any way the evidentiary  
13 admissibility of any document, testimony, or other matter at any court  
14 proceeding related to this matter. The marking of Designated Material as  
15 CONFIDENTIAL INFORMATION or ATTORNEYS’ EYES ONLY  
16 INFORMATION pursuant to this Order shall not, for that reason alone, bar its  
17 introduction or use at any court proceeding related to this matter pursuant to  
18 such terms and conditions as the Court may deem appropriate, consistent with  
19 the need for a complete and accurate record of the proceedings; provided,  
20 however, that every effort shall be made, through the use of procedures agreed  
21 upon by the parties or otherwise, to preserve the confidentiality of Designated  
22 Material marked as CONFIDENTIAL INFORMATION or ATTORNEYS’  
23 EYES ONLY INFORMATION.

#### 24 22. NON-PARTY REQUEST/SUBPOENA OF DESIGNATED MATERIAL

25 If a Receiving Party receives a subpoena or other compulsory process  
26 from a non-party to this lawsuit, seeking production or other disclosure of a  
27 Producing Party’s Designated Material, that Receiving Party shall give written  
28 notice to outside counsel of record for the Producing Party within ten (10)

1 business days after receipt of the subpoena or other compulsory process  
2 identifying the specific Designated Material sought and enclosing a copy of the  
3 subpoena or other compulsory process. If the Producing Party timely seeks a  
4 protective order, the Receiving Party to whom the subpoena or other compulsory  
5 process was issued or served shall not produce the Designated Material  
6 requested prior to receiving a Court order or consent of the Producing Party. In  
7 the event that Designated Material is produced to the non-party, such material  
8 shall be treated as Designated Material pursuant to this Order.

9 23. UNINTENTIONAL DISCLOSURE OF DESIGNATED MATERIAL

10 If Designated Material, or any portion thereof, is disclosed by the  
11 Receiving Party, through inadvertence or otherwise, to any person or party not  
12 authorized under this Protective Order, then the Receiving Party shall use its best  
13 efforts to retrieve immediately all copies of such Designated Material, and to  
14 bind such person to the terms of this Order. In such event, the Receiving Party  
15 shall also (a) promptly inform such person of all the provisions of this Order; (b)  
16 identify such person immediately to the Producing Party; and (c) request such  
17 person to execute the Acknowledgment of Protective Order in the form shown in  
18 Exhibit A.

19 24. NOTICE

20 Any and all written notice that is required to be given under any section of  
21 this Order may be performed via any method permitted under the Federal Rules  
22 of Civil Procedure, or via commercial courier service, facsimile or electronic  
23 mail, and shall be sent to the undersigned attorney(s) for the parties to this  
24 Order. Where this Order sets forth a deadline by which notice must be given,  
25 such notice must be received by said deadline.

26 25. COUNSEL'S RIGHT TO PROVIDE ADVICE

27 Nothing in this Order shall bar or otherwise restrict any counsel herein  
28 from rendering advice to the counsel's party-client with respect to this action,

1 and in the course thereof, relying upon an examination of Designated Material,  
2 provided, however, that in rendering such advice and in otherwise  
3 communicating with the party-client, the counsel shall not disclose any  
4 Designated Material, nor the source of any Designated Material, to anyone not  
5 authorized to receive such Designated Material pursuant to the terms of this  
6 Order.

7 26. NO CONTRACT

8 To the extent that the parties have agreed on the terms of this Order, such  
9 stipulation is for the Court's consideration and approval as an order. The  
10 parties' stipulation shall not be construed to create a contract between the parties  
11 or between the parties and their respective counsel.

12 27. EFFECTIVE DATE

13 This Order shall be effective on the date of its execution, provided that all  
14 material previously produced shall be deemed ATTORNEYS' EYES ONLY  
15 INFORMATION unless and until they are redesignated by the Producing Party  
16 or by further order of the Court.

17 28. TERMINATION

18 The termination of this action shall not automatically terminate the  
19 effectiveness of this Order and persons subject to this Order shall be bound by  
20 the confidentiality obligations of this Order until the Producing Party agrees  
21  
22

23 ///

24  
25  
26  
27 ///  
28

1 otherwise in writing or this Court (or any other court or competent jurisdiction)  
2 orders otherwise.

3  
4 **ORDER**

5 

6  
7 DATE: August 26, 2011

8 

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THE HONORABLE PAUL L. ABRAMS  
9 UNITED STATES MAGISTRATE JUDGE

10 RESPECTFULLY SUBMITTED FOR ENTRY BY:

11 DATED: \_August \_\_, 2011\_\_\_\_\_ FOWLER LAW GROUP, PLC

12 and

13 LAW OFFICES OF STANTON &  
14 ASSOCIATES

15 By: \_\_\_\_\_  
16 Michael Lloyd, Esq.  
17 Attorneys for Defendant  
18 NATIONAL RETAIL  
19 TRANSPORTATION, INC.

20 DATED: \_August \_\_, 2011\_\_\_\_\_ LAW OFFICES OF TIMOTHY J.  
21 DONAHUE

22 and

23 TRUSH LAW OFFICES, APC

24 By: \_\_\_\_\_  
25 James M. Trush, Esq.  
26 Attorneys for Plaintiff



**EXHIBIT A**

**ACKNOWLEDGEMENT OF PROTECTIVE ORDER**

I, \_\_\_\_\_, state that:

I have read and reviewed in its entirety the annexed Protective Order (“Protective Order”) that has been signed and entered in the lawsuit before the United States District Court for the Central District of California, entitled *Edgar Garcia Flores, et al. v. National Retail Transportation, Inc., et al.*, Case No. 2:11-CV-01424-SVW-PLA.

I understand the terms of the Protective Order, and hereby agree to be bound by and comply with the terms of the Protective Order, and not to disseminate or disclose any information subject to the Protective Order that I review or about which I am told to any person, entity, party, or agency for any reason, except in accordance with the terms of the Protective Order.

I understand that contempt sanctions may be entered for violation of this Protective Order and further agree to submit to the jurisdiction of this Court for the purposes of enforcement of the terms of this Protective Order.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
(Signature)